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A-449-804
3rd Administrative Review
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Office 1: SCS

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

DATE: February 3, 2006

SUBJECT: Issues and Decision Memorandum for the Final Results of the Third Administrative Review of Steel Concrete Reinforcing Bars from Latvia

Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the third administrative review of steel concrete reinforcing bars (rebar) from Latvia. As a result of our analysis, we have made changes to the margin calculation. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this review for which we have received comments from the parties:

Comment 1: Use of Monthly Cost Comparison Periods

Comment 2: Date of Sale

Comment 3: Home Market Interest Rate for Imputed Credit Expenses

Comment 4: U.S. Interest Rate for Imputed Credit Expenses

Comment 5: Treatment of Non-Dumped Sales

Background

On October 7, 2005, the Department of Commerce (the Department) published the preliminary results of the third administrative review of rebar from Latvia.[1] The period of review (POR) is September 1, 2003, through August 31, 2004. We invited parties to comment on the *Preliminary Results*. The respondent, Joint Stock Company Liepajas Metalurgs (LM), submitted a case brief on November 14, 2005; the petitioners[2] submitted a rebuttal brief on November 21, 2005.

Discussion of the Issues

Comment 1: Use of Monthly Cost Comparison Periods

In its original Section D response, LM submitted monthly cost of production (COP) data and requested that the Department use monthly comparison periods for the sales below cost test. For the *Preliminary Results*, the Department used standard POR-wide weighted-average cost data.[3] In its case brief, LM reiterates its request that the Department use monthly cost comparison periods to account for an unprecedented surge in the costs of the primary inputs for producing the subject merchandise. LM argues that comparing monthly COP data to sales of the subject merchandise during the same month is necessary for fairly determining whether home market sales were made at prices below the COP.

LM points to different circumstances and cases in which the Department has shortened the standard period-wide cost reporting period. First, LM cites *Silicomanganese from Brazil*[4] and *Flowers from Colombia*[5] as cases in which the Department used monthly cost periods to account for high inflation (*i.e.*, annual inflation in excess of 25%) in the country subject to investigation.

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[1] *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 70 FR 59687 (October 7, 2005) (*Preliminary Results*).

[2] The petitioners in this proceeding are the Rebar Trade Action Coalition (RTAC) and its individual members.

[3] *See Preliminary Results* at 59688.

[4] *See Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813, dated March 24, 2004 (*Silicomanganese from Brazil*), and accompanying Issues and Decision Memorandum at Comment 4.

[5] *See Asociacion Colombiana de Exportadores de Flores v. United States*, 6 F. Supp. 2d 865, 873-874 at n.7 (Court of International Trade (CIT) 1998) (*Flowers from Colombia*).

Second, LM cites *SRAMS from Taiwan*,[6] *DRAMS from Korea*,[7] and *EPROMS from Japan*[8] as cases in which the Department used shorter cost reporting periods because the price of the subject merchandise declined significantly and consistently during the POR. LM also cites *Sweaters from Taiwan*,[9] in which the Department compared prices to the costs for individual production runs, and *Salmon from Norway*,[10] in which the Department calculated separate fiscal year costs.

Furthermore, comparing its circumstances to those of *Pineapple from Thailand*,[11] LM argues that the Department has shortened the standard POR-wide cost comparison period to take into account increases in the prices of the primary raw material inputs for producing subject merchandise. LM explains that the CIT remanded the Department's rejection of the respondent's proposal to use fiscal year cost reporting periods to account for a 50 percent increase in the price of raw pineapple, the primary raw material input.[12] As LM states, the CIT concluded that the Department's decision upon remand to use separate fiscal year costs sufficiently accounted for increased raw material costs and matched fiscal year costs with appropriate sales.[13] LM adds that the Court of Appeals for the Federal Circuit (CAFC) upheld the Department's results upon remand.[14] Finally, LM points out that the Department's results for *Hot-Rolled Steel From*

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[6] *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan*, 62 FR 51442, 51444, dated October 1, 1997; *see also Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8920, dated February 23, 1998 (collectively, *SRAMS from Taiwan*).

[7] *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 58 FR 15467, 15476, dated March 23, 1993 (*DRAMS from Korea*).

[8] *See Erasable Programmable Read Only Memories From Japan*; *Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39682, dated October 30, 1986 (*EPROMs from Japan*).

[9] *See Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan*, 55 FR 34585, 34596, dated August 23, 1990 (*Sweaters from Taiwan*).

[10] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review*, 58 FR 37912, 37913, dated July 14, 1993 (*Salmon from Norway*).

[11] *See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392, 7399-7400, dated February 13, 1998 (*Pineapple from Thailand*).

[12] *See Thai Pineapple Canning Industry Corp., Ltd. v. United States*, 23 CIT 286 (1999).

[13] *See Thai Pineapple Canning Industry Corp., Ltd. v. United States*, 24 CIT 107, 113 (2000).

[14] *See Thai Pineapple Canning Industry Corp., Ltd. v. United States*, 273 F.3d 1077 (Fed. Cir. 2001).

Brazil[15] stated that the Department may modify the cost reporting period if the facts of the case show that a single POR-average cost calculation will distort the dumping analysis.

According to LM, the administrative record demonstrates that costs for its primary inputs - scrap, pig iron, and pig iron scrap - increased significantly from the beginning of the POR to the end of the POR. Referring to COP information in its April 7, 2005, supplemental questionnaire response, LM claims that the prices it paid for domestic and imported steel scrap, pig iron, and pig iron scrap increased by up to 231.35 percent.[16] LM also notes that its costs for other raw material inputs, such as ferrotitanium and silicocalcium, increased by up to 320 percent.[17] As a result, LM claims, the monthly COP for the control numbers (CONNUMs) with the highest sales volume during the POR increased by up to 55.85 percent from the beginning of the POR to the end of the POR. LM claims that the prices of the raw material inputs increased by a magnitude greater than the level for the Department's definition of a high inflation economy. It contends that the steep increases in the costs of the primary raw material inputs during the POR would distort the Department's below cost sales analysis by significantly overstating production costs during the beginning of the POR and significantly understating production costs during the end of the POR. Finally, LM notes that its comparison of costs followed the Department's analysis in *Pasta from Italy*,[18] in which the Department focused on the difference between input prices at the beginning of the POR and the end of the POR.

Citing *SSSS from Mexico*,[19] LM states that the Department explained it will use monthly or quarterly costs in a non-high inflation economy only when a primary input experiences a consistent increase or decrease throughout the reporting period. LM contends that it has met this standard by exceeding the Department's standards from other cases. First, LM claims that the prices for its primary inputs exceeded the 50 percent increases found in *Pineapple from Thailand*. Attempting to distinguish its circumstances from cases in which the Department chose not to use

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[15] *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 70 FR 58683, dated October 7, 2005 (*Hot-Rolled Steel from Brazil*).

[16] *See* LM's case brief at page 10. ("The average unit value for Latvian pig iron scrap increased from (price) LVL/MT in September 2003 to (price) LVL/MT in August 2004, for an even larger increase of 231.35 percent.")

[17] *See* LM's case brief at page 12. ("...silicocalcium increased by 320 percent.")

[18] *See Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852, dated December 13, 2000 (*Pasta from Italy*), and accompanying Issues and Decision Memorandum at Comment 18.

[19] *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 3677, dated January 26, 2005 (*SSSS from Mexico*), and accompanying Issues and Decision Memorandum at Comment 8.

shorter cost reporting periods, LM refers to *SSSS from France*[20] and *Pipe from Brazil*[21] as cases in which there was insufficient evidence to demonstrate that the price of raw material inputs increased significantly. LM states that the administrative record in the current segment of the proceeding is consistent with the Department's determination in *Brass from the Netherlands*,[22] in which the raw material inputs representing a significant percentage of the COP increased consistently and substantially during the POR. Finally, LM contends that the Department should use monthly profit ratios for the calculation of constructed value (CV) if it continues to use a final POR-wide average cost calculation.

Countering LM's analysis, the petitioners claim that if the Department determines that LM's scrap price fluctuations exceed some significance threshold, then it will establish a precedent with this case that will apply to all other steel cases. The petitioners argue that this will force the Department to request new information across all pending steel cases. Furthermore, the petitioners argue that LM has not cited any other steel case in which the Department used a period shorter than the POR to calculate production costs. The petitioners also argue that LM ignores the Department's recent determination in *Rebar from Turkey*,[23] in which the Department rejected a proposal by two respondents to calculate COP on a quarterly basis.

The petitioners reject the cases cited by LM as not supportive of its arguments. First, rejecting LM's reference to *Silicomanganese from Brazil*, the petitioners state that the Department's use of monthly costs in cases of high inflation has no relevance to LM's case because Latvia did not experience high inflation during the POR. Second, citing language from *Rebar from Turkey*,[24] the petitioners argue that the Department already determined that *SRAMS from Taiwan*, *DRAMS from Korea*, and *EPROMS from Japan* do not apply to rebar cases because these cases involved rapid advances to high technology products. Finally, the petitioners argue that LM's analysis of *Pineapple from Thailand* focused only on a 50 percent increase in the price of the primary input. They claim that LM ignores other factors, including a longer-than-normal POR and a significant

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[20] *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 70 FR 45668, dated August 8, 2005 (*SSSS from France*).

[21] *See Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Brazil*, 70 FR 7243, dated February 11, 2005 (*Pipe from Brazil*), and accompanying Issues and Decision Memorandum at Comment 5.

[22] *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands*, 65 FR 742, dated January 6, 2000 (*Brass from the Netherlands*).

[23] *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, dated November 8, 2005 (*Rebar from Turkey*), and accompanying Issues and Decision Memorandum at Comment 1.

[24] *See Rebar from Turkey* at Comment 1.

inventory lag time in the sale of the subject merchandise, that contributed to the CAFC's decision.

The petitioners note that the Department applied its analysis criteria from *Brass from the Netherlands* to its analysis in *Rebar from Turkey*. They argue that the circumstances in *Brass from the Netherlands* are distinguishable from LM's circumstances because the subject merchandise in *Brass from the Netherlands* had a single primary input, the price of the primary input experienced a significant and consistent change during the POR, and information on the record tied raw material price fluctuations to price fluctuations for the subject merchandise. The petitioners find that none of these circumstances is present in LM's case.

The petitioners contend that many other factors besides scrap costs contribute to the cost of producing rebar. Citing the Department's analysis in *Brass from the Netherlands*, the petitioners note that the Department employed shorter cost periods based on an analysis of the prices of inputs that represented approximately 70% of the total COP for the subject merchandise. The petitioners claim that LM's argument fails to demonstrate that scrap is the primary input for the production of rebar. In addition, the petitioners claim that the price of the primary input in *Brass from the Netherlands* dropped consistently throughout the POR. They also argue that the Department declined to use monthly costs in *Pasta from Italy*[25] because the price of the primary input declined over only a six-month period, not over the entire POR. The petitioners argue that LM's scrap prices, in contrast, fluctuated throughout the POR.

Furthermore, the petitioners contend that there must be evidence of a direct link between input costs and sales transactions in order to consider the use of shorter cost periods, as the Department explained in *Rebar from Turkey*. They claim that LM has not demonstrated how sales in a given month relate to direct material costs within the same month or how the Department's methodology is distortive. Citing *Rebar from Turkey*,[26] the petitioners contend that the Department has noted the benefits of using the standard method, including smoothing out the effect of fluctuating raw materials costs. Finally, the petitioners claim that there is no case precedent or justification that supports LM's proposal to use monthly CV profit ratios.

Department's Position:

We agree with the petitioners that the Department should not deviate from its normal practice of using POR-wide average costs to calculate COP and CV for these final results. The Department addressed very similar issues in *Rebar from Turkey*, where we analyzed the arguments of two respondents to use quarterly costs instead of POR-average costs. As discussed in *Rebar from Turkey*, the Department uses POR-average costs to smooth the effects of fluctuating materials costs, erratic production levels, repairs and maintenance, inefficient production runs, and

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[25] *See Pasta from Italy* at Comment 15.

[26] *See Rebar from Turkey* at Comment 1.

seasonality.[27] Furthermore, as discussed in *Rebar from Turkey*, factors such as the raw material inventory turnover period and the producer's inventory valuation method affect the timing relationship between the purchase of raw materials, production, and sale of the final product. As a result, the cost of manufacturing (COM) during a shorter cost period may not accurately relate to the sales during that period. These factors tend to smooth out over an extended period of time, thereby resulting in an average cost that reasonably reflects the cost of production for sales made throughout the year. We find the facts in this case support the same reasoning for not using a shorter cost averaging period as articulated in *Rebar from Turkey*.

We do not find that LM's references to *Silicomanganese from Brazil* or *Flowers from Colombia* apply to the facts of this case because Latvia did not experience high inflation during the POR. Therefore, LM's claim that its raw material cost increases exceeded the Department's standard for high inflation does not require that we follow those precedents. Furthermore, following the Department's analysis *in Rebar from Turkey,* we do not find that the facts of *SRAMS from Taiwan, DRAMs from Korea*, or *EPROMS from Japan* apply to this analysis because the products in these cases experienced dramatic price and cost changes over a short time due to technological advancements. Finally, the decision by the CAFC in *Pineapple from Thailand* stated that the combination of a rise in costs and the inventory lag time issue together distorted the calculation of dumping margins.[28] The inventory lag issue is not present in LM's case, thereby distinguishing its circumstances from those in *Pineapple from Thailand*.

LM argues that its circumstances are similar to those of *Brass from the Netherlands*, which the Department followed in *Rebar from Turkey*. In *Rebar from Turkey*, the Department analyzed three criteria specified in *Brass from the Netherlands*: first, the significance of the change to the COM; second, whether the change to the COM was consistent and significant throughout the POR; and third, whether fluctuations in the prices of the direct material inputs could be directly tied to sales of the subject merchandise. For the first criterion, LM's submitted cost data show that the COM for the subject merchandise increased significantly at certain points of the POR. However, the data also show that this increase was not consistent throughout the POR. Instead, the COM increased substantially at certain points of the POR, but then declined. During other parts of the POR, the COM experienced minor fluctuations in both directions.[29] Therefore, LM's submitted cost data do not show consistent changes to the COM during the POR.

Furthermore, as explained in *Rebar from Turkey*, the prices of the raw material inputs in *Brass from the Netherlands* were directly tied to each sales transaction, thereby allowing the costs of the input metals to be tied directly to corresponding sales of the subject merchandise. In this case, as was the case in *Rebar from Turkey*, sales of the subject merchandise cannot be tied

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[27] *See Rebar from Turkey* at Comment 1, citing *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 55 FR 26225, 26228 (June 27, 1990); and *Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47256 (September 8, 1993).

[28] *See Thai Pineapple Canning Industry Corp., Ltd. v. United States*, 273 F.3d 1077, 1085 (Fed. Cir. 2001).

[29] *See* LM's monthly home market cost database ("LMCOPCV04") submitted with its Sections A-D supplemental questionnaire response dated April 6, 2005.

directly to the purchase prices for the primary raw materials used to produce the product. Without this direct link, sales during one month will not tie directly to LM's recorded raw material costs for the same month. This may result in a less accurate comparison of prices to costs than a POR-average because many other factors influence the comparison of production costs to sales.

In LM's case, tying costs directly to the related sales transactions is critical because LM requested the use of monthly costs as opposed to quarterly costs as requested in *Rebar from Turkey*.[30] As stated, the Department uses POR-average costs to smooth the effects of fluctuating raw materials costs. A sharp and sudden fluctuation in raw materials prices towards the end of one month may not pass through to the price of the subject merchandise until subsequent months. As a result, under a monthly cost calculation, the link between materials costs and sales prices of the subject merchandise is even more tenuous than under a quarterly cost calculation because the comparison period is shorter. We also note that during certain months of the POR, the sales prices for specific foreign like products were increasing while costs were decreasing. Because of this pattern, using monthly comparisons of costs to sales does not necessarily result in a more accurate comparison because the price trend does not always reflect the cost trend.

Therefore, for the final results, we have followed the Department's practice of using POR weighted-average costs for the foreign like product in calculating the weighted-average dumping margin for LM.

Comment 2: Date of Sale

For the *Preliminary Results*, the Department selected the date of contract addendum as the date of sale. It used the date of amendment to the contract addendum as the date of sale for sales in which the total quantity changed from the addendum to the amendment. LM contends that the invoice date, not the contract addendum date, is the date on which the final material terms of sale are established. It argues that the final quantity is not determined until the issuance of the final commercial invoice. Furthermore, LM argues that the product mix specified in a contract may change at any time up to the issuance of the commercial invoice. Referring to specific addenda in its submissions to the Department, LM argues that product mix, grade, and lot breakdown may change between the issuance of the contract addendum and the commercial invoice. In addition, LM notes that it does not determine the actual weight of the merchandise until it cuts the commercial invoice because its U.S. sales are based on theoretical weight. LM argues that the use of commercial invoice date as the date of sale is necessary to ensure an equal comparison to its home market sales, which it sells on an actual weight basis. Finally, LM claims that changing the date of sale methodology at this stage of the proceeding may cause certain sales to fall out of the analysis and cause others to be reviewed twice.

Furthermore, LM argues that reviewing courts have held that the Department may not change a methodology when a respondent has relied on that methodology in previous segments of a

[30] *See* LM's case brief at page 4 and *Rebar from Turkey* at Comment 1.

proceeding. Citing the CIT's decision in *Shikoku*,[31] LM argues that the CIT determined that the Department is in certain circumstances bound by its prior actions so that respondents may purge themselves of antidumping liabilities. LM contends that the use of the invoice date as the date of sale is crucial for monitoring its pricing practices because this allows LM to produce and sell identical merchandise in the U.S. and home market during the same month. LM claims that the shift in the Department's methodology will break this link, thereby limiting the effectiveness of its antidumping compliance efforts. As a result, LM argues, the change will produce fewer comparisons of identical merchandise and more CV comparisons, which is contrary to the statutory scheme under sections 772 and 773 of the Tariff Act of 1930, as amended (the Act). Finally, LM argues that if the Department chooses to change its methodology, then it should do so for the fifth administrative review period because this would not penalize LM for its reliance on the former methodology.

The petitioners reject LM's argument that the Department is precluded from changing a methodology from one segment of a proceeding to another. Citing *Rebar from Turkey (2003)*,[32] the petitioners claim that the Department considers each segment of a proceeding separately from others based on the facts of each segment. Furthermore, the petitioners also contest LM's argument that the Department has not provided LM with adequate notice of a change in the date of sale methodology. The petitioners argue that the Department has provided LM with notice of the change by releasing the results at the preliminary stage of the review, thereby allowing LM to comment on the methodology. They contend that the Department would never be able to revise a decision made in a prior segment of a proceeding under LM's reasoning.

The petitioners argue that the Department found that quantity changes within a specified tolerance did not constitute a change to the material terms of sale in both *Pipe and Tube from Thailand (2001)*[33] and *Hot-Rolled Steel from Kazakhstan*.[34] Referring to language in the *Verification Report*,[35] the petitioners contend that LM does not consider post-contract changes to the product mix or quantity to be a contract change as long as the total quantity remains within

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[31] *See Shikoku Chemicals Corp. v. United States*, 795 F. Supp. 417 (CIT 1992) (*Shikoku*).

[32] *See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not to Revoke in Part*, 68 FR 53127, dated September 9, 2003 (*Rebar from Turkey (2003)*), and accompanying Issues and Decision Memorandum at Comment 6.

[33] *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18901-902, dated April 12, 2001 (*Pipe and Tube from Thailand (2001)*).

[34] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 22168, 22171, dated May 3, 2001; *see also Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 50397, dated October 3, 2001 (collectively, *Hot-Rolled Steel from Kazakhstan*).

[35] *See* Memorandum from Shane Subler, International Trade Compliance Analyst, to Susan Kuhbach, Director, Office 1, Re: Verification of the Sales and Cost Responses of Joint Stock Company Liepajas Metalurgs in the Third Administrative Review of Steel Concrete Reinforcing Bars from Latvia, dated September 30, 2005 (*Verification Report*), at pages 10-11.

the specified tolerance range. Furthermore, the petitioners argue that LM's case brief acknowledges that all post-contract or post-amendment changes were within the specified tolerance range. Therefore, the petitioners conclude that the contract addendum / amendment date is the appropriate date of sale.

Department's Position:

We disagree with LM that the Department is bound to the date of sale methodology applied in previous administrative reviews. Each segment of a proceeding must be analyzed based on its particular facts. In *Pipe and Tube from Thailand (2000)*, the Department used contract date as the date of sale even though it had used invoice date in previous segments of the proceeding.[36] Furthermore, by announcing our decision at the preliminary results stage of this proceeding, we have provided interested parties with time to comment.

The CIT has distinguished *Shikoku* from other cases in which the Department changed some aspect of the antidumping calculation from one segment of a proceeding to another. The CIT distinguished *Sanyo*[37] and *Flowers from Colombia*[38] from *Shikoku* because the records in these cases, in contrast to *Shikoku*, did not include evidence that the respondents had adjusted their prices in accordance with the Department's methodology in previous reviews. Further, in *Sinopec*,[39] the CIT upheld the Department's decision to change its cost allocation methodology from one segment of a proceeding to another. Although the respondent argued that it detrimentally relied on the Department's methodology, the Department found that the change was necessary to reflect more accurately the respondent's costs. The CIT affirmed the Department's decision because the Department articulated a reasonable rationale for its methodology based on record evidence and because the respondent failed to demonstrate reliance on the Department's prior methodology.

The facts of this segment of the proceeding are also distinguishable from those of *Shikoku*. First, LM points to its lower margin since the investigation as evidence of its antidumping compliance efforts, but it does not point to specific evidence on the record to demonstrate its reliance on the Department's date of sale methodology used in previous reviews. Second, during this segment of the proceeding, the Department requested extensive sales documentation for all of LM's U.S.

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[36] *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 65 FR 60910, dated October 13, 2000 (*Pipe and Tube from Thailand (2000)*), and accompanying Issues and Decision Memorandum at Comment 1. ("Therefore, for the reasons stated above, we disagree with Saha Thai that similar facts in this and the prior review necessitate the continued use of date of invoice as the date of sale. Instead, we find that the information on the record of this review helped us to determine that it is appropriate for us to change the focus of our analysis to consider the importance of price terms and the relevance of agreed-upon weight tolerances in this proceeding.")

[37] *See Sanyo Elec. Co. v. United States*, 86 F. Supp. 2d 1232 (CIT 1999) (*Sanyo*).

[38] *See Flowers from Colombia,* 6 F. Supp. at 880.

[39] *See Sinopec Sichuan Valyon Works v. United States*, 366 F. Supp. 2d 1339 (CIT 2005) (*Sinopec*).

sales during the POR.[40] As we stated in the *Preliminary Results Analysis Memorandum*,[41] this documentation showed that the per-unit price for each sale did not change between the issuance of the contract addendum and the issuance of the final invoice. We also stated that the quantity for each sale remained within the specified tolerance between the contract addendum / amendment and the final invoice.[42] Therefore, the documentation showed that the date of the contract addendum most accurately established the date on which the material terms of sale were established. For sales in which the quantity on the contract addendum was updated by an amendment to the addendum, we used the date of the amendment to the addendum as the date of sale.

Although we continue to disagree with LM's argument that the invoice date best establishes the material terms of sale, we agree with LM's argument that the product mix constitutes a material term of sale. The Department has interpreted "material terms of sale" to include price and quantity. It has also indicated that the terms to examine in selecting the date of sale are those which directly affect the calculation of the dumping margin.[43] As we stated in the *Preliminary Results Analysis Memorandum*, the price and quantity within a specified tolerance are established in either the contract addendum or the amendment to the addendum.[44] However, for all sales, the product mix changed between the issuance of the contract addendum and the issuance of the final amendment to the addendum. As explained below, the product mix is a term of sale which directly affects the calculation of the dumping margin. Therefore, for the final results, we have determined that the date of the final amendment to the contract addendum is the date that best establishes the material terms of sale for all of LM's U.S. market sales during the POR.

Information in LM's sales documentation demonstrates that the product mix constitutes a term of sale that directly affects the calculation of the dumping margin. The documentation for one sale shows that LM amended the original contract addendum by adding a size (diameter) of product that was not specified in the contract addendum.[45] The change adds an additional CONNUM to

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[40] *See* the letter from LM to the Department, dated June 7, 2005, Re: Submission of Attachment 3 of the June 6, 2005 Supplemental Response; *see also* the letter from LM to the Department, dated July 6, 2005, Re: Submission of Additional Documents Missing from Attachment 3 of the June 6, 2005 Supplemental Response.

[41] *See* Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Subject: Analysis Memorandum for Joint Stock Company Liepajas Metalurgs, dated September 30, 2005 (*Preliminary Results Analysis Memorandum*).

[42] *See Preliminary Results Analysis Memorandum* at pages 3-4.

[43] *See Hornos Electricos De Venezuela, S.A., v. United States et al.*, 285 F. Supp 2d 1353, 1367 (CIT 2003), citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5554, 5575 (February 4, 2000), and *Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand*, 66 FR 52744 (October 17, 2001) (*Pineapple from Thailand (2001)*), and accompanying Issues and Decision Memorandum at Comment 12 (noting that the central purpose of establishing a date of sale is to select the point in time "when the terms which directly affect our dumping calculation were actually set.").

[44] *See Preliminary Results Analysis Memorandum* at pages 3-4.

[45] *See* LM's June 7, 2005, submission to the Department, Re: Submission of Attachment 3 of the June 6, 2005 Supplemental Response and LM's July 6, 2005, submission to the Department, Re: Submission of Additional Documents Missing from Attachment 3 of the June 6, 2005 Supplemental Response.

LM's sales reported under this contract addendum. For other selected sales, the documentation shows that LM amended the contract addendum by increasing the quantity of certain sizes (in diameter) of rebar and decreasing the quantity of other sizes.[46] These amendments change the quantities of the individual CONNUMs that LM reported to the Department in its U.S. sales database.[47] Therefore, product mix, which is established with the issuance of the final amendment to the addendum, has a direct effect on the calculation of the dumping margin.

In *SeAH Steel*,[48] the CIT addressed the importance of product mix in determining the correct date of sale. The CIT upheld the Department's decision in this case to use the invoice date as the date of sale because the respondent did not provide sufficient information to support its request for the use of contract date. In its analysis, the CIT stated, "the Department could not determine from this information whether the quantities ordered of size-specific OCTG had remained the same from the contract date to the invoice date."[49] Information on the record of this proceeding indicates that the size-specific quantity totals are established by the final amendment to the contract addendum. Therefore, based on the information in LM's submitted sales documentation for all its U.S. sales, we have used the date of final amendment to the contract addendum as the date of sale for LM's U.S. sales.

Comment 3: Home Market Interest Rate for Imputed Credit Expenses

At verification, the Department found that LM did not have any short-term loans in lats during the POR.[50] Therefore, the Department used the one-month Riga Interbank Offer Rate (RIGIBOR) from the Bank of Latvia as a surrogate interest rate for the home market imputed credit expense calculation for the *Preliminary Results*. LM does not contest the Department's decision to use a surrogate interest rate, but it does contest the Department's selection of the RIGIBOR rate. LM argues that the RIGIBOR rate is not a short-term lending rate, for which Policy Bulletin 98.2 establishes a preference. It argues that the Bank of Latvia's rate on loans to domestic enterprises better reflects the interest rates on commercial borrowing by Latvian businesses.

The petitioners did not comment on this issue.

Department's Position:

We agree that the Bank of Latvia's interest rate data on loans to domestic enterprises is more comparable to the Federal Reserve's weighted-average data for commercial and industrial loans than the RIGIBOR rate used in the *Preliminary Results*. *See* Comment 4 below. For the *Preliminary Results*, the Department used a POR-average of the one-month Riga Interbank Offer

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[46] *See Id*.

[47] For an explanation of proprietary information contained in LM's sales documentation, *see* Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Re: Final Results Analysis Memorandum for Joint Stock Company Liepajas Metalurgs, dated February 3, 2006 (*Final Results Analysis Memorandum*).

[48] *See SeAH Steel Corp. v. United States*, 25 CIT 133 (2001) (*SeAH Steel*) at page 5.

[49] *See Id*.

[50] *See Verification Report* at page 18.

Rate (RIGIBOR), a Latvian index of money market rates. In the past, the Department has used money market rates as a surrogate for calculating imputed credit expenses.[51] However, this case has no unique circumstances which suggest that a rate other than one comparable to the Federal Reserve's rate for commercial and industrial loans is more appropriate. Therefore, for the final results, we have used the Bank of Latvia's data for interest rates on loans to domestic enterprises as a surrogate rate for calculating home market imputed credit expenses. For details on the calculation of the surrogate rate, *see* the *Final Results Analysis Memorandum*.

Comment 4: U.S. Interest Rate for Imputed Credit Expenses

Based on results at verification, the Department determined that LM did not correctly calculate the U.S. dollar interest rate used in its imputed credit expense calculation for U.S. sales.[52] Therefore, for the *Preliminary Results*, the Department used the Federal Reserve's published rates for non-financial commercial paper with a one-month maturity as a surrogate. LM does not contest the Department's decision to use a surrogate interest rate, but it argues that the commercial paper rate does not reflect lending rates to businesses in the United States. It claims that the 30-day maturity period is too short and that the non-financial commercial paper rate is not a rate used by U.S. banks to lend money to their business customers. LM argues that the monthly average of bank prime loan rates published by the Federal Reserve better reflects the interest rates available on loans to businesses in the United States.

The petitioners did not comment on this issue.

Department's Position:

Policy Bulletin 98.2 states, "(S)pecifically, (the Department) will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made." The Federal Reserve maintains these specific data on its website at http://www.federalreserve.gov/releases/e2/ under the heading "Survey of Terms of Business Lending." For the *Preliminary Results*, the Department used a POR-average of the interest rates on nonfinancial commercial paper with a 30-day maturity. Although this represents a published rate on short-term industrial loans, this case presents no unique circumstances to deviate from using the specific interest rate source listed in Policy Bulletin 98.2. Therefore, in accordance with Policy Bulletin 98.2, we have modified the *Preliminary Results* by using the Federal Reserve's data on commercial and industrial loans by all commercial banks with a maturity of 31 to 365 days. For a list of the rates used in the calculation, *see* the Memo to the File from Shane Subler, International Trade Compliance Analyst, Re: Federal Reserve Data for Interest Rates on Industrial and Commercial Loans, dated January 20, 2006. *See also* the *Final Results Analysis Memorandum* for details on the calculation of the surrogate rate.

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[51] *See, e.g., Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review*, 67 FR 6488, dated February 12, 2002, and accompanying Issues and Decision Memorandum at Comment 1.

[52] *See Preliminary Results* at 58688.

Comment 5: Treatment of Non-Dumped Sales

LM notes that the Department's calculations for the *Preliminary Results* followed the standard practice of assigning a margin of zero to U.S. sales made at or above the prices charged for home market sales. Referring to the *WTO Appellate Body Softwood Lumber Determination*,[53] LM argues that the Appellate Body affirmed that this practice violates Article 2.4.2 of the *Antidumping Agreement*.[54] LM cites *Corus Staal*[55] as a case in which the Court of International Trade (CIT) upheld the Department's determination that the *Bed Linens*[56] case between the European Union and India had no binding effect upon the United States. LM asserts that the *WTO Appellate Body Softwood Lumber Determination*, by contrast, involves a dispute between Canada and the United States, thereby binding the United States to change its practice. LM urges the Department to modify its current methodology by offsetting positive margins with negative margins.

The petitioners counter that the practice of not offsetting for non-dumped sales is mandated by the statute and is affirmed by recent WTO rulings. Citing *Hot-Rolled Steel from the Netherlands*,[57] *Automotive Replacement Glass from China*,[58] *Softwood Lumber from Canada (2002)*,[59] and *Structural Steel Beams from Luxembourg*,[60] the petitioners claim that the Department has concluded that its methodology is consistent with its obligations under the Act. The petitioners note that the Act defines "dumping margin" as the amount by which normal value (NV) exceeds export price (EP) or constructed export price (CEP). Therefore, the petitioners assert that the Department may not include negative dumping margins in the calculation of an

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[53] *See United States - Final Determination On Softwood Lumber From Canada, WT/DS264/AB/R., AB-2004-2, Report of the Appellate Body* (August 11, 2004) (*WTO Appellate Body Softwood Lumber Determination*).

[54] *See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (*Antidumping Agreement*).

[55] *See Corus Staal BV v. United States*, 259 F. Supp. 2d 1253, 1273 (CIT 2003) (*Corus Staal*).

[56] *See European Communities–Antidumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/R, dated October 30, 2000, and the subsequent report by the WTO Appellate Body, WT/DS141/AB/R, dated March 1, 2001 (collectively, *Bed Linens*).

[57] *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 50408, dated October 3, 2001 (*Hot-Rolled Steel from the Netherlands*), and accompanying Issues and Decision Memorandum at Comment 1.

[58] *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482, dated February 12, 2002 (*Automotive Replacement Glass from China*), and accompanying Issues and Decision Memorandum at Comment 34.

[59] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539, dated April 2, 2002 (*Softwood Lumber from Canada (2002)*), and accompanying Issues and Decision Memorandum at Comment 12.

[60] *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg*, 67 FR 35488, dated May 20, 2002 (*Structural Steel Beams from Luxembourg*), and accompanying Issues and Decision Memorandum at Comment 13.

aggregate weighted-average dumping margin. Finally, the petitioners argue that the Statement of Administrative Action (SAA) states that the Department is not bound by the decisions of the WTO's Dispute Settlement Body or Appellate Body. The petitioners add that the WTO's most recent ruling affirms the Department's practice in administrative reviews.[61]

Department's Position:

We have not changed our calculation of the weighted-average dumping margin for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act. *See*, *e.g.*, *Softwood Lumber from Canada (2004)*[62] and *Pipe and Tube from Thailand (2004)*.[63]

The CAFC has affirmed the Department's methodology as a reasonable interpretation of the statute. *See Timken v. United States*[64] (covering an antidumping administrative review of tapered roller bearings). More recently, the CAFC again affirmed the Department's methodology as consistent with the statute with respect to an antidumping investigation in *Corus Staal II*.[65] The Court in *Corus Staal II* held that the Department's interpretation of section 771(35) of the Act to permit this methodology was permissible whether it be in the context of an administrative review or investigation. *See Id.* at 1346.

With regard to LM's argument concerning the *WTO Appellate Body Softwood Lumber Determination*, at the instruction of United States Trade Representative, the Department implemented the WTO report on May 2, 2005, pursuant to section 129 of the URAA.[66] Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO: the antidumping duty

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[61] *See World Trade Organization, United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") Report of the Panel*, WT/DS294/R, dated October 31, 2005, with summary of findings at pages 151-152.

[62] *See Notice of Final Results of Antidumping Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921, dated December 20, 2004 (*Softwood Lumber from Canada (2004)*), and accompanying Issues and Decision Memorandum at Comment 4.

[63] *See Final Results of Administrative Antidumping Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 69 FR 61649, dated October 20, 2004 (*Pipe and Tube from Thailand (2004)*), and accompanying Issues and Decision Memorandum at Comment 7.

[64] *See Timken v. United States*, 354 F.3d 1334, 1342-43 (Fed. Cir. 2004) (*Timken v. United States*).

[65] *See Corus Staal v. United States Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (*Corus Staal II*), cert. denied, 2006 U.S. Lexis 36 (U.S. January 6, 2006).

[66] *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada*, 70 FR 22636, dated May 2, 2005.

investigation of softwood lumber from Canada. *See* 19 U.S.C. 3538. The implementation of the *WTO Appellate Body Softwood Lumber Determination* has no bearing on this or any other antidumping duty proceeding.[67]

Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish in the *Federal Register* the final results of the antidumping review and the final weighted-average dumping margin.

Agree_____ Disagree_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date

[67] *See Corus Staal v. United States*, 387 F. Supp. 2d 1291 (CIT 2005).